

IN THE SENATE

SENATE BILL NO. 1223

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO ANIMALS; AMENDING CHAPTER 1, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-111, IDAHO CODE, TO AUTHORIZE THE IDAHO DEPARTMENT OF AGRICULTURE TO REGULATE LARGE SWINE AND POULTRY FEEDING OPERATIONS, TO PROVIDE REGULATION PROVISIONS RELATING TO LARGE SWINE AND POULTRY FEEDING OPERATIONS, TO PROVIDE FOR LOCAL REGULATION AND TO DEFINE TERMS; AMENDING TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 53, TITLE 22, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSES, TO DEFINE TERMS, TO PROVIDE FOR SITE APPROVAL, TO PROVIDE FOR LOCAL REGULATION, TO PROVIDE FOR APPLICATION OF SITE APPROVAL PROVISIONS, TO AUTHORIZE THE DIRECTOR OF THE IDAHO DEPARTMENT OF AGRICULTURE TO MAKE CERTAIN RULES AND TO CONTRACT WITH OTHER AGENCIES, TO PROVIDE FOR LOCATION GUIDELINES, TO PROVIDE FOR SITE REVIEW PANELS, TO PROVIDE FOR SITE APPLICATIONS, TO PROVIDE FOR FEES, TO PROVIDE FOR DUTIES OF THE DIRECTOR REGARDING APPLICATIONS, TO PROVIDE FOR FINANCIAL ASSURANCE FOR CLOSURE AND REMEDIATION, TO AUTHORIZE THE DIRECTOR TO REQUEST ADDITIONAL INFORMATION AND TO PROVIDE FOR VIOLATIONS AND ENFORCEMENT; TO PROVIDE FOR CONFIDENTIALITY OF RECORDS; TO PROVIDE FOR SEVERABILITY; TO SET FORTH PROVISIONS RELATING TO CONFLICTS; REPEALING SECTION 39-104A, IDAHO CODE, RELATING TO THE REGULATION OF LARGE SWINE AND POULTRY FEEDING OPERATIONS; AND REPEALING CHAPTER 79, TITLE 39, IDAHO CODE, RELATING TO THE LOCAL OPTION SWINE FACILITIES SITING ACT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 1, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-111, Idaho Code, and to read as follows:

22-111. AUTHORITY TO MAKE RULES REGULATING LARGE SWINE AND POULTRY FEEDING OPERATIONS – FINANCIAL ASSURANCES. (1) Large swine and poultry feeding operations require adequate control through state regulatory mechanisms in order that such operations do not pose a threat to the state's surface and ground water resources. The department of agriculture is in the best position to administer and implement rules to provide an adequate regulatory framework for large swine and poultry feeding operations.

(2) The director is authorized to modify the department's existing administrative rules and to make new rules for permitting and regulating large swine and poultry feeding operations,

1 as they shall be defined by the department. The department is authorized to work with the  
2 department of environmental quality in the development of such rules.

3 (3) Owners and operators of swine and poultry facilities required to obtain a permit  
4 from the Idaho department of agriculture to construct, operate, expand or close the facilities  
5 shall provide financial assurances demonstrating financial capability to meet requirements for  
6 operation and closure of the facilities and remediation. Requirements for financial assurances  
7 shall be determined by the department as set forth in rule. Financial assurances may include  
8 any mechanism or combination of mechanisms meeting the requirements established by agency  
9 rule including, but not limited to, surety bonds, trust funds, irrevocable letters of credit,  
10 insurance and corporate guarantees. The mechanisms used to demonstrate financial capability  
11 must be legally valid, binding and enforceable under applicable law and must ensure that the  
12 funds necessary to meet the costs of closure and remediation will be available whenever the  
13 funds are needed. The director may retain financial assurances for up to five (5) years after  
14 closure of a facility to ensure property closure and remediation, as defined by rule.

15 (4) Those swine facilities described in section 22-5305, Idaho Code, shall meet the  
16 requirements of section 22-5307, Idaho Code, in addition to the requirements of this chapter  
17 and the department's rules regulating swine and poultry facilities, prior to the issuance of a  
18 final permit by the director. The director shall require that swine facilities be constructed in  
19 a phased manner over a period of time and that no additional facilities be constructed until  
20 the director approves the associated waste treatment system. The director may require that  
21 poultry facilities be constructed in a phased manner over a period of time and that no additional  
22 facilities be constructed until the director approves the associated waste treatment system.

23 (5) Permits for large swine and poultry feeding operations shall include plans and  
24 specifications for the operation's waste management systems. The department of agriculture's  
25 review and approval of such plans and specifications shall be in lieu of the department of  
26 environmental quality's review and approval provided under section 39-118, Idaho Code. The  
27 director of the Idaho department of agriculture shall have the authority to exercise any other  
28 authorities delegated by the director of the department of environmental quality regarding the  
29 protection of surface and ground water from the impacts of large swine and poultry feeding  
30 operations and the director of the department of environmental quality shall have the authority  
31 to delegate such authorities.

32 (6) Nothing in this section prohibits the boards of county commissioners of any county  
33 or the governing body of any city from adopting regulations that are more stringent or that  
34 require greater financial assurances than those imposed by the department. A board of county  
35 commissioners of a county or a governing body of a city in which a swine or poultry facility  
36 is located may choose to determine whether the facility is properly closed according to  
37 imposed standards or may leave that determination to the department. This choice shall be  
38 communicated to the director in writing when closure begins; provided that determinations of  
39 closure by a board of county commissioners of a county or a governing body of a city in which  
40 the swine or poultry facility is located shall not permit closure under less stringent requirements  
41 than those imposed by the department.

42 (7) As used in this section:

43 (a) "Animal unit" means a unit equaling two and one-half (2 1/2) swine, each weighing  
44 over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10)  
45 weaned swine, each weighing under twenty-five (25) kilograms, or one hundred (100)  
46 poultry. Total animal units are calculated by adding the number of swine weighing over

twenty-five (25) kilograms multiplied by four-tenths (.4) plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1) plus the number of poultry multiplied by one one-hundredth (.01).

(b) "Facilities" or "facility" means a place, site or location or part thereof where swine or poultry are kept, handled, housed or otherwise maintained and includes, but is not limited to, buildings, lots, pens and animal waste management systems, and which has a one-time animal unit capacity of two thousand (2,000) or more animal units.

(c) "Large swine and poultry feeding operations" means swine facilities and poultry facilities having a one-time animal unit capacity of two thousand (2,000) or more animal units.

(d) "One-time animal unit capacity" means the maximum number of animal units that a facility is capable of housing at any given time.

SECTION 2. That Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 53, Title 22, Idaho Code, and to read as follows:

#### CHAPTER 53 LOCAL OPTION SWINE FACILITIES SITING ACT

22-5301. SHORT TITLE. This act shall be known as the "Local Option Swine Facilities Siting Act."

22-5302. LEGISLATIVE FINDINGS AND PURPOSES. (1) The legislature finds that:

(a) The swine industry is experiencing rapid changes such as increased sophistication of production technology, increased demand for capital to maintain or expand operations, consolidation of production and packing facilities and changing consumer demands and markets;

(b) Large swine facilities increase social and environmental impacts in the areas where these facilities are located;

(c) Adverse public health and environmental impacts can result from the improper siting of large swine facilities, therefore, the need for establishing safe sites with an adequate supply of natural resources, such as water, and an adequate capacity for the disposal of animal waste is a matter of statewide concern;

(d) Section 22-111, Idaho Code, vests the department of agriculture with the responsibility to make rules regulating swine operations; and section 39-105, Idaho Code, vests the department of environmental quality with the responsibility for the general supervision of the promotion and protection of the life, health and environment of the people of the state, including regulation of air quality, water quality and disposal of solid waste.

(2) (a) To facilitate swine facility siting decisions by boards of county commissioners and governing bodies of cities, this chapter establishes a review process within the department of environmental quality for construction or expansion of large swine facilities of a certain size, and to require approval of sites.

(b) The procedures and requirements established in this chapter are necessary to facilitate the proper siting of large swine facilities, to effect timely and responsible completion

of statutory duties and to ensure protection of human health, natural resources, private property values and the environment of the state.

(c) The site approval required in this chapter is required in addition to any other license, permit or approval required by law or rule.

(3) It is the intent of the legislature that this chapter will be applied only to swine facilities with a capacity of twenty thousand (20,000) animal units or more and that this chapter will not be applied to any other confined animal feeding operations.

22-5303. DEFINITIONS. As used in this chapter:

(1) "Active unit" means that part of a facility or unit that has received or is receiving wastes and that has not been closed.

(2) "Animal unit" is a unit of measurement equaling two and one-half (2 1/2) swine, each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10) weaned swine, each weighing under twenty-five (25) kilograms. Total animal units are calculated by adding the number of swine weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds) multiplied by four-tenths (.4), plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1).

(3) "Animal waste" means animal excrement, feed wastes, process wastewater or any other waste associated with the confinement of swine.

(4) "Animal waste management system" means any structure or system that provides for the collection, treatment, disposal, distribution or storage of animal waste.

(5) "Applicant" means the owner or the operator with the owner's written consent.

(6) "Aquifer" means a geological formation, group of formations, or a portion of a formation capable of yielding significant quantities of ground water to wells or springs.

(7) "Certified planner" means a person who has completed the nutrient management certification in accordance with the nutrient management standard.

(8) "County" means any county in the state of Idaho.

(9) "Department" means the Idaho department of agriculture.

(10) "Director" means the director of the Idaho department of agriculture.

(11) "Existing facility" means a facility built and in operation one (1) year or more before the original effective date of this chapter.

(12) "Expand" or "expanding facility" means a swine facility of less than twenty thousand (20,000) animal units that increases its one-time animal unit capacity to twenty thousand (20,000) or more animal units.

(13) "Facility" means any place, site or location or part thereof where swine are kept, handled, housed, or otherwise maintained and includes, but is not limited to, all buildings, lots, pens, animal waste management systems, structures, and other appurtenances and improvements on the land.

(14) "Ground water" means water below the land surface in a zone of saturation.

(15) "Holocene fault" means a fault characterized as a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side and holocene being the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.

(16) "Land application" means the spreading on or incorporation of animal waste into the soil mantle primarily for beneficial purposes.

(17) "Natural resources conservation service" or "NRCS" means the United States department of agriculture, natural resources conservation service.

(18) "Nutrient management plan" means a plan prepared in compliance with the nutrient management standard or other equally protective standard approved by the director for managing the amount, source, placement, form and timing of the land application of nutrients and soil amendments for plant production and to minimize the potential for environmental degradation, particularly of water quality.

(19) "Nutrient management standard" means the standard of the United States department of agriculture, natural resource conservation service code 590 or the Idaho agricultural pollution abatement plan, nutrient management standard component practice.

(20) "One-time animal unit capacity" means the maximum number of animal units that a facility is capable of housing at any given point in time.

(21) "Operate" means to confine, feed, propagate, house or otherwise sustain swine.

(22) "Operator" means the person(s) responsible for the overall operation of a facility or part of a facility.

(23) "Owner" means the person(s) who owns a facility or part of a facility.

(24) "Permit" when used as a noun means a permit issued by the director pursuant to rules of the department.

(25) "Person" means an individual, association, firm, partnership, political subdivision, public or private corporation, state or federal agency, municipality, industry or any other legal entity whatsoever, and includes owners and operators.

(26) "Plan of operation" or "operating plan" means the written plan developed by an owner or operator of a swine facility unit detailing how the facility is to be operated during its active life, during closure, and throughout the postclosure period.

(27) "Process wastewater" means any water used in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of swine and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste.

(28) "Qualified professional" means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in compliance with applicable provisions of the Idaho Code.

(29) "Unauthorized discharge" means a release of animal waste to the environment or waters of the state that is not authorized by the license or the terms of a national pollutant discharge elimination system (NPDES) permit issued by the federal environmental protection agency.

(30) "Water quality standard" means a standard set for maximum allowable contamination in surface waters and ground water as set forth in the water quality standards for waters of the state of Idaho.

(31) "Waters of the state" means all the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof that are wholly or partially within, that flow through or border upon the state.

22-5304. SITE APPROVAL REQUIRED – SITE APPROVAL IS SUPPLEMENTAL – LOCAL OPTION – LOCAL ACTION REQUIRED FOR DEPARTMENT ACTION. (1) No

1 person may construct or expand a large swine facility regulated pursuant to this chapter without  
2 first obtaining site approval from the director as provided in this chapter.

3 (2) The site approval required in this chapter for construction or expansion of a large  
4 swine facility is required in addition to requirements of any rules of the department. Further,  
5 the site approval required in this chapter must be obtained in addition to any other license,  
6 permit or approval required by law or rule.

7 (3) This chapter does not preempt the local regulation of swine facilities. This chapter  
8 provides boards of county commissioners and governing bodies of cities with an optional  
9 procedure for siting swine facilities. If boards of county commissioners and governing bodies  
10 of cities do not exercise their option to comply with this chapter, they are not subject to its  
11 provisions and may exercise individual authority to accept, regulate or reject swine facilities  
12 independently of this chapter.

13 (4) This chapter applies only if the board of county commissioners or governing body  
14 of a city, whichever has jurisdiction over the site for a proposed swine facility, chooses to  
15 comply with the provisions of this chapter. If a board of county commissioners or a governing  
16 body of a city with jurisdiction chooses not to comply with the provisions of this chapter, the  
17 department is not required to take any action under the provisions of this chapter.

18 (5) Boards of county commissioners and governing bodies of cities that choose to  
19 comply with the provisions of this chapter shall signify compliance by resolution or ordinance  
20 communicated to the director in writing.

21 (6) If a board of county commissioners or a governing body of a city chooses to comply  
22 with the provisions this chapter, the department does not have to issue a determination or notice  
23 of environmental suitability of facility location pursuant to its rules for swine facilities.

24 22-5305. APPLICATION – FACILITIES REGULATED. (1) The following swine  
25 facilities must obtain site approval under the provisions of this chapter:

26 (a) New swine facilities having a one-time animal unit capacity of twenty thousand  
27 (20,000) or more animal units; and

28 (b) Existing swine facilities that expand their one-time animal unit capacity to twenty  
29 thousand (20,000) animal units or more.

30 (2) Two (2) or more swine facilities under common owners, operators or those with  
31 whom the owners or operators contract or are located within the same county or within five  
32 (5) miles of each other shall be considered, for purposes of licensing, to be a single facility  
33 regulated under the provisions of this chapter, even though separately their capacity is less than  
34 twenty thousand (20,000) animal units. In each case, the director shall determine whether one  
35 (1) or multiple site approvals are required.

36 (3) (a) Existing swine facilities with a one-time animal unit capacity of twenty thousand  
37 (20,000) animal units built and in operation one (1) year or more before the original  
38 effective date of this chapter are exempt from the requirement to obtain a site approval  
39 pursuant to this chapter unless they expand as provided in this section. However, such  
40 facilities shall register with the director within three (3) months after the original effective  
41 date of this chapter. The director shall determine the information that must be submitted  
42 as part of their registration.

43 (b) Existing swine facilities required in this subsection to register with the director shall  
44 submit a nutrient management plan and closure plan to the director for approval within

two (2) years of the original effective date of this chapter in accordance with rules of the department. An application fee shall not be required unless the facility is expanding.

22-5306. DIRECTOR MAY MAKE RULES AND CONTRACT WITH OTHER AGENCIES. (1) The director may adopt administrative rules he deems necessary or helpful to carry out the purposes of this chapter.

(2) The director may enter into contracts, agreements, memorandums and other arrangements with federal, state and local agencies to carry out the purposes of this chapter.

22-5307. LOCATION GUIDELINES. This section provides location guidelines for swine facilities regulated in this chapter. Where the location guidelines provide a specific setback distance, that distance is the minimum setback distance that may be imposed. Further setback distances shall be imposed as circumstances require.

(1) A swine facility regulated pursuant to this chapter shall not:

(a) Locate its closest waste facility within at least two (2) miles of any occupied residence not owned or leased by the owner or operator of the swine facility;

(b) Land apply liquid animal waste within at least one (1) mile of the nearest corner of an occupied residence not owned or leased by the owner or operator of the swine facility.

(2) The setback distances provided in subsection (1) of this section do not apply if the affected property owner executes a written waiver with the owner or operator of the swine facility, under terms and conditions that the parties may negotiate. The written waiver is effective when recorded in the offices of the recorder of deeds in the county in which the property is located. The recorded waiver shall preclude enforcement of the setback distances contained in subsection (1) of this section. A change in ownership of the applicable property or change in ownership of the swine facility does not affect the validity of the waiver.

(3) All distances between occupied residences and swine facilities shall be measured from the closest corner of the walls of the occupied residence to the closest point of the nearest waste structure or waste facility, as defined by the director.

(4) No liquid animal waste may be land applied within at least one hundred (100) feet of an existing public or private drinking water well.

(5) The minimum distance from a waste structure or waste facility to a domestic well, public well or public water source shall be at least one (1) mile.

(6) Further, swine facilities shall not be located:

(a) In areas designated by the United States fish and wildlife service or the Idaho department of fish and game as critical habitat for endangered or threatened species of plants, fish or wildlife;

(b) So as to be at variance with any locally adopted land use plan or zoning requirement unless otherwise provided by local law or ordinance. If no land use plan has been adopted by the local government which would have land use jurisdiction pursuant to chapter 65, title 67, Idaho Code, the recommendations of the panel approving a site shall contain an analysis of the requirements and guidelines provided in this chapter. The analysis shall be accompanied by findings and conclusions, entered by the local government with jurisdiction after the local government has held a public hearing in accordance with section 67-6509, Idaho Code, that the public interest would be served by locating a swine facility on the site for which approval is sought;

- (c) No nearer than one (1) mile to any local, state or national park, or land reserved or withdrawn for scenic or natural use; and
- (d) No nearer than two (2) miles to a school, church, hospital or community center.
- (7) A swine facility active unit shall not be located:
- (a) Within a one hundred (100) year flood plain;
  - (b) Within five hundred (500) feet upstream of a perennial stream or river;
  - (c) Within one thousand (1,000) feet of any perennial lake or pond;
  - (d) So as to cause any measurable impact on water quality limited streams;
  - (e) Within a wetland;
  - (f) Within two hundred (200) feet of the property line of adjacent land;
  - (g) Within two hundred (200) feet of a holocene fault or adjacent to geologic features which could compromise the structural integrity of a swine facility active unit unless the owner or operator demonstrates to the director that an alternative setback distance of less than two hundred (200) feet will prevent damage to the structural integrity of the swine facility unit and will be protective of human health and the environment. For the purposes of this subsection:
    - (i) "Fault" means a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side;
    - (ii) "Displacement" means the relative movement of any two (2) sides of a fault measured in any direction;
    - (iii) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.
  - (h) Within seismic impact zones, unless the owner or operator demonstrates to the director that all swine facility active units and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and notify the director that it has been placed in the operating record. For the purposes of this section:
    - (i) "Seismic impact zone" means an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed one-tenth (0.10g) in two hundred fifty (250) years;
    - (ii) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment;
    - (iii) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.
  - (i) On any site whose natural state would be considered unstable in that its undisturbed character would not permit establishment of a swine facility without unduly threatening the integrity of the design due to inherent site instability;
  - (j) Where the integrity of the site would be compromised by the presence of ground water which would interfere with construction or operation of the active unit.



1        22-5308. SITE REVIEW PANELS ESTABLISHED. (1) A site review panel shall be  
 2 established to ensure public input in the siting process and to recommend to the director site  
 3 approval, approval with conditions or rejection.

4        (2) A panel shall consist of eight (8) members to be appointed as follows:

5        (a) Three (3) members shall consist of the director of the department of environmental  
 6 quality or his designee, the director of the department of water resources or his designee,  
 7 and the director of the department of agriculture or his designee.

8        (b) One (1) member shall be a public member appointed by the governor. The public  
 9 member shall be an environmental professional, shall serve as chairman of the panel and  
 10 shall be a voting member. A member who is a public member shall be appointed to serve  
 11 on site review panels only until the particular site application subject to their review is  
 12 approved, or until the application is rejected and is no longer subject to their review.

13        (c) Two (2) members shall be appointed by the city council of the city located closest  
 14 to, or in which the swine facility is proposed to be located or expanded, provided the  
 15 governing body of the city has signified compliance with this chapter as provided in  
 16 section 22-5304, Idaho Code. At least one (1) member shall be a resident of the city.  
 17 However, if two (2) cities are equidistant from the proposed or expanding swine facility,  
 18 plus or minus five (5) miles, the city council of each city shall appoint one (1) member  
 19 each to the site review panel, each of whom shall be a resident of the city appointing  
 20 them. The members serving pursuant to this subsection (2) shall serve until the particular  
 21 site application subject to their review is approved or is rejected and is no longer subject  
 22 to their review.

23        (d) Two (2) members shall be appointed by the county commission and be residents of  
 24 the county where the swine facility is proposed to be located or expanded, provided that  
 25 the board of county commissioners has signified compliance with this chapter as provided  
 26 in section 22-5304, Idaho Code. The members serving pursuant to this subsection (2)  
 27 shall serve until the particular site application subject to their review is approved, or until  
 28 the application is rejected and is no longer subject to their review.

29        (e) A person nominated to represent a city or county shall not have a conflict of interest,  
 30 as that term is defined in section 59-703, Idaho Code, or derive any economic gain as  
 31 that term is defined in section 59-703, Idaho Code, from the location of the proposed or  
 32 expanding swine facility.

33        (3) The director shall notify the city council of the nearest city, or cities if two (2)  
 34 cities are within five (5) miles of the site of the proposed facility, and the board of county  
 35 commissioners in which the site is located, of a site application filed with the department and  
 36 shall instruct the city or cities and county to appoint the necessary members to a panel.

37        (4) A majority of members of the panel shall constitute a quorum for the transaction of  
 38 business of the panel and the concurrence of a majority of the panel shall constitute a legal  
 39 action of the panel, provided that no meeting of the panel shall occur unless there are at least as  
 40 many members present representing the city and county as there are representing the state and  
 41 the public as appointed pursuant to paragraphs (a) and (b) of subsection (2) of this section. All  
 42 meetings of the panel shall be conducted pursuant to the state open meeting law.

43        (5) The director shall make staff available to assist the panel in carrying out its  
 44 responsibilities.

45        (6) Members of the panel who are not state employees shall be entitled to receive  
 46 compensation as provided in section 59-509(b), Idaho Code.

22-5309. SITING APPLICATION – FEE – RULES. (1) A site application shall include, in a format set forth by the director and when determined applicable by the director, the following information:

- (a) Name, mailing address and phone number of the facility owner;
- (b) Name, mailing address and phone number of the facility operator;
- (c) Name and mailing address of the facility;
- (d) Legal description of the facility location;
- (e) The legal structure of the entity owning the facility, including the names and addresses of all directors, officers, registered agents and partners;
- (f) The names and locations of all swine facilities owned and/or operated by the applicant within the last ten (10) years;
- (g) The one-time animal unit capacity of the facility;
- (h) The type of animals to be confined at the facility;
- (i) Evidence that a valid water right exists to supply adequate water for the proposed facility or a copy of either an application for a permit to appropriate water or an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho department of water resources which, if approved, will supply adequate water for the proposed operation; and
- (j) The facility's biosecurity and sanitary standards.

(2) A facility plan. Plans and specifications for the facility's animal waste management system that include the following information:

(a) Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following:

- (i) Layout of the facility, including buildings and animal waste management system;
- (ii) The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant;
- (iii) The location of occupied dwellings, public and private gathering places, such as schools, churches and parks, and incorporated municipalities that are within a two (2) mile radius of the facility; and
- (iv) Private and community domestic water wells, irrigation wells, irrigation conveyance and drainage structures, monitoring wells, wetlands, streams, springs, and reservoirs that are within a one (1) mile radius of the facility.

(b) Facility specifications including:

- (i) A site plan showing:
  - 1. Building locations;
  - 2. Waste facilities;
  - 3. All waste conveyance systems; and
  - 4. All irrigation systems used for land application, including details of approved water supply protection devices.
- (ii) Building plans showing:
  - 1. All wastewater collection systems in housed units;
  - 2. All freshwater supply systems, including details of approved water supply protection devices;

3. Detailed drawings of wastewater collection and conveyance systems and containment construction; and
4. Detailed construction and installation procedures.

(3) Site characterization. A characterization of the facility and any land application site(s) owned or operated by the applicant, prepared by a registered professional geologist, a registered professional engineer or a qualified ground water hydrologist, that includes the following information:

- (a) A description of monitoring methods, frequency and reporting components related to either leak detection systems and/or ground water monitoring wells;
- (b) The climatic, hydrogeologic and soil characteristics;
- (c) The depth to water and a potentiometric map for the uppermost and regional aquifer;
- (d) The vertical and horizontal conductivity, gradient and ground water flow direction and velocity;
- (e) Estimates of recharge to the uppermost aquifer;
- (f) Information that characterizes the relationship between the ground water and adjacent surface waters; and
- (g) A summary of local ground water quality data.

(4) A nutrient management plan. A plan prepared by a certified planner demonstrating compliance with the nutrient management standard for land application.

(5) A plan for meeting standards for heavy metals as those provided in 40 CFR section 503, subchapter O.

- (6) A plan for disposal of dead animal carcasses.
- (7) An air quality management plan.
- (8) A closure plan. A plan describing the procedures for final closure of a facility that ensures no adverse impacts to the environment and waters of the state and that includes:

- (a) The estimated length of operation of the facility;
- (b) A description of the procedures, methods and schedule to be implemented at the facility for final disposal, handling, management and/or treatment of all animal waste; and
- (c) A plan for permanent disposal of residual solid waste.

(9) Other information. An applicant shall provide any other information relative to this section and deemed necessary by the director to assess protection of human health and the environment, including information showing that:

- (a) The harm to scenic, public health, environmental, private property, historic, cultural or recreational values is not substantial or can be mitigated;
- (b) The risk and impact of accident during transportation of animal waste or animal carcasses is not substantial or can be mitigated. Dead animals shall be removed from the facility for rendering, cremation, burial, composting or other disposal in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal";
- (c) The impact on local government is not adverse regarding health, safety, cost and consistency with local planning and existing development or can be mitigated;
- (d) The facility or operations associated with the facility do not create a public health hazard or nuisance conditions including odors;
- (e) The applicant has the financial ability to construct, operate and close the facility.

(10) Within thirty (30) days after receipt of the application, the director shall determine whether it is complete. If it is not complete, the director shall notify the applicant and state the areas of deficiency.

(11) The application shall be accompanied by a fee. The director shall establish by rule the scale for determining the application fee. The fee shall be based on the cost to the site review panel of reviewing the application. The scale shall be based on characteristics including the site size, projected waste volume, and hydrogeological and atmospheric characteristics surrounding the site. Fees received pursuant to this section may be expended by the director to pay the actual, reasonable and necessary costs incurred by the department in acting upon an application.

22-5310. DUTIES OF THE DIRECTOR RELATIVE TO APPLICATIONS. (1) Upon determination that a siting application is complete, the director shall:

(a) Notify the permanent panel members, the city and/or county in which the swine facility site is located, the director of the department of fish and game, the director of the department of law enforcement, and other state agencies as deemed appropriate by the director.

(b) Publish a notice that the application has been received, as provided in section 60-109, Idaho Code, in a newspaper having major circulation in the county and the immediate vicinity of the site. The notice shall contain a map indicating the location of the site, a description of the proposed action and the location where the application may be reviewed. The notice shall describe the procedure by which the siting approval under this chapter may be granted.

(2) Upon notification by the director, the chairman shall immediately notify the representatives of the state to the panel and the public members. The chairman shall also notify the applicable county and city for their appointment of members as provided in subsection (2) of section 22-5308, Idaho Code. Within thirty (30) days after the notification, the board of commissioners of the county and the city council shall select the members to serve on the panel. The panel shall be created at that time and notification of the creation of the panel shall be made to the chairman.

(3) Within thirty (30) days after appointment of panel members, the panel shall meet to review and establish a timetable for the consideration of the draft site approval.

(4) The panel shall:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall:

(i) Contain a map indicating the location of the site and proposed facility, a description of the proposed action, and the location where the application for a siting approval may be reviewed and where copies may be obtained;

(ii) Identify the time, place and location for the public hearing held to receive public comment and input on the application for a siting approval;

(b) Publish the notice not less than thirty (30) days before the date of the public hearing and the notice shall be, at a minimum, a twenty (20) days' notice as provided in section 60-109, Idaho Code.

(5) Comment and input on the proposed siting of the swine facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the panel for thirty (30) days after the public hearing date. The public hearing shall be held in the same county as the proposed site. If the proposed site is adjacent to a city or populated area

1 in a neighboring county, it is recommended that public hearings also be held in the neighboring  
2 county.

3 (6) The panel shall consider, but not be limited to, the following:

4 (a) The risk of the spread of disease or impact upon public health from improper  
5 treatment, storage or incineration methods;

6 (b) The impact on local units of government where the proposed swine facility is to be  
7 located in terms of health, safety, cost and consistency with local planning and existing  
8 development;

9 (c) The nature of the probable environmental and public health impact;

10 (d) The financial capability of the applicant to construct, operate and close the swine  
11 facility;

12 (e) Impact on adjacent property values.

13 (7) The panel shall consider the concerns and objections submitted by the public. The  
14 panel shall facilitate efforts to provide that the concerns and objections are mitigated by  
15 proposing additional conditions regarding the construction of the swine facility. The panel  
16 may propose conditions that integrate the provisions of the city or county ordinances, permits  
17 or requirements.

18 (8) Within one hundred eighty (180) days after creation, the panel shall issue an approval  
19 letter, approval letter with conditions, or rejection. If the panel recommends conditions, a  
20 clear statement of the need for a condition must be submitted to the director. If the panel  
21 recommends rejection, a clear statement of the reasons for the rejection must be submitted to  
22 the director.

23 (9) The director shall not issue a permit to operate unless a site has been approved by  
24 the site review panel. Approval of a site by the panel does not require the director to issue a  
25 permit to operate.

26 22-5311. FINANCIAL ASSURANCE FOR CLOSURE AND REMEDIATION. (1) All  
27 swine facilities regulated pursuant to section 22-111, Idaho Code, and this chapter shall provide  
28 financial assurances demonstrating financial capability to meet requirements for closure of the  
29 facilities and remediation. Requirements for financial assurances shall be determined by the  
30 agency as set forth in rule. Financial assurances may include any mechanism or combination  
31 of mechanisms meeting the requirements established by agency rule including, but not limited  
32 to, surety bonds, trust funds, irrevocable letters of credit, insurance and corporate guarantees.  
33 The mechanism(s) used to demonstrate financial capability must be legally valid, binding and  
34 enforceable under applicable law and must ensure that the funds necessary to meet the costs  
35 of closure and remediation will be available whenever the funds are needed. The director may  
36 retain financial assurances for up to five (5) years after closure of a facility to ensure proper  
37 closure and remediation, as defined by rule.

38 (2) Nothing in this section prohibits the boards of county commissioners of any county  
39 or the governing body of any city from adopting regulations that are more stringent or that  
40 require greater financial assurances than those imposed by the department of environmental  
41 quality.

42 22-5312. DIRECTOR MAY REQUEST ADDITIONAL INFORMATION. The  
43 applicant shall provide the director with additional information the director deems necessary to  
44 process an application, within thirty (30) days of the director's request. The time period within

which the director must act with regard to an application shall be stayed until the information requested is provided. If an applicant fails to provide the information within this time period, unless a longer time period is allowed by the director, the director may stop the application process and require the applicant to submit a new application.

22-5313. VIOLATIONS AND ENFORCEMENT. (1) The following acts are unlawful:

(a) Failure to comply with this chapter and any rules of the department regulating swine facilities, and conditions of site approval granted pursuant to this chapter;

(b) Knowingly making a false statement, representation, or certification in any application report, document, or record developed, maintained, or submitted pursuant to this chapter, rules or conditions of a site approval.

(2) Any person violating the provisions of this chapter or any site approval or order under this chapter is liable for a civil or criminal penalty in accordance with chapter 1, title 22, Idaho Code. The director may apply the provisions of chapter 1, title 22, Idaho Code, to ensure compliance.

(3) The director may revoke a site approval:

(a) For material violation of any condition of a site approval, final agency order or order or judgment of a court secured by any state or federal agency and relating to the operation of a swine facility;

(b) If an approval was obtained by misrepresentation or failure to disclose all relevant facts;

(c) If approval for adequate water rights cannot be obtained from the Idaho department of water resources;

(d) The site or facility does not meet the requirements of this chapter.

(4) A private right of action on behalf of any person who has been injured or damaged by any approval authorized in this chapter or violation of the terms of any approval or rule authorized in this chapter may be maintained in accordance with the provisions of this chapter and/or the provisions of chapter 52, title 67, Idaho Code, as applicable.

22-5314. CONFIDENTIALITY OF RECORDS. Information obtained by a public agency pursuant to this chapter or its associated rules is subject to public disclosure pursuant to the provisions of chapter 3, title 9, Idaho Code.

22-5315. SEVERABILITY CLAUSE. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

22-5316. CONFLICTS CLAUSE. If a conflict arises between this chapter and rules of the department regulating swine facilities, the most restrictive provision shall apply.

SECTION 3. That Section [39-104A](#), Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Chapter 79, Title 39, Idaho Code, be, and the same is hereby repealed.